

# ***Support Open and Fair Competition for Mansfield Construction Projects***

## **Presented by:**

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# ***Local Contractors***

- Thank you for the time you have dedicated to this process and for giving the local contractors the opportunity to address the Committee this morning
- The group standing before you today represent six local companies that have worked on projects in Mansfield for many years

# ***Local Contractors***

- Some operate their businesses and pay taxes here in Mansfield. They also provide good paying jobs and careers for local residents
- The contractors before you today employ over 200 people, 67 who live in the Mansfield area.
- All municipalities strive to have quality, and responsible contracting for their public projects. But it is important that we consider all the facts and don't risk unintended consequences that hurt the local workers

# *Our Understanding of an RCO*

- It is an ordinance that sets requirements for contractors and subcontractors bidding on publicly funded projects.
- These requirements are then incorporated into bid documents so that potential bidders will know what is expected of them in order to obtain work.

# ***Why are Some Groups Promoting RCOs?***

- The question needs to be asked, who would financially benefit from the RCO?
- Would those who are promoting the RCO stand to gain if the effect of the RCO is to exclude virtually all merit/open shop contractors from working on construction projects?

# ***Facts and Myths about RCOs***

- The way they are promoted – RCOs might seem a logical way to improve the quality of public construction projects. Who wouldn't want a “Responsible” Contracting Ordinance?
- Like many laws, the name sounds good, but the devil is in the details. Let's take a look at some “Facts and Myths”

# ***Myth: RCOs Mandate Higher Wages***

- **FACT** – The Connecticut Prevailing Wage statute mandates that all construction workers on publicly funded projects get paid the same wages and fringe benefits
- Any wage mandate on an RCO is a redundant provision to the already existent and enforced state law

# ***Myth: RCOs Make the Project Safer***

- **FACT** – There is no data that suggests that RCOs deliver safer construction projects
- CT has done more than any state in the nation to require safety training for public construction projects. The RCOs that we've read do not require any additional safety measures or training. Instead they've focused on whether a firm is union or non-union, and no data exists to show that union firms are safer. Research need to be done on the last 5 years of Connecticut construction. How many fatalities have we had? What types of jobsites were they on? How can they be prevented?



# ***Myth: RCOs will provide better trained employees***

- **FACT** – Craftsmen in Electrical, HVAC, Sheet Metal, Fire Sprinkler, Elevators, Glass and Cranes, whether union or non-union already have the same apprenticeship and safety training.
- The local contractors here today, as well as other open shop contractors across the state work to provide lifelong careers in the construction industry and take pride in training and educating their employees in all trades.

# ***Myth: RCOs will prevent undocumented workers from working on jobs***

- Fact: RCOs do NOT prevent undocumented workers from working on Mansfield projects.
- All public projects in the State of Connecticut require Prevailing Wage accompanied by Certified Payroll which details each workers information. This includes information on whether the worker has proper documentation
- Since there are already regulations designed to prevent undocumented workers from working on public jobs, adding similar language to an RCO would be redundant and would not fix the problem

# ***Myth: RCOs will provide stricter work rules and schedules***

- Fact: RCOs do not mandate stricter jobsite rules or work schedules
- Both of these items are always (or should always) be included in the contract for each specific job. Using an RCO to include language regarding rules and schedules is redundant

# ***RCO: Unintended Consequences***

- While RCOs may sound logical in the way they are packaged and explained – there are serious unintended consequences that are incurred when adopting these agreements. These consequences should be examined as they will impact both local contractors and the taxpayer of the town

# ***RCO: Unintended Consequences (Cont.)***

## **1) Discrimination-**

- RCOs can prevent good, qualified, local contractors from bidding jobs because of certain mandates
- For example: the State of Connecticut does not recognize apprenticeship programs for non-union Laborers and Operators. If those types of workers are required on the job, open shop contractors are disqualified from bidding

## ***RCO: Unintended Consequences (Cont.)***

- If great care is not taken in the drafting of the RCO, it could shut out qualified, responsible, non-union contractors. This is an important point, as they account for over 80% of the local industry.
- That includes the local contractors here today, that live, operate businesses, provide jobs and pay taxes in Mansfield

# ***RCO: Unintended Consequences (Cont.)***

## **2) Cost Increases:**

- If you eliminate 80% of the industry from the bidding process, you will get fewer bids on these projects
- If local firms can't comply with the RCO, you'll get a higher number of out of town and out of state bidders
- Less competition will equal higher costs, with increases estimated as high as 20%
- What would be town of Mansfield be getting in return for paying 20% more for public projects?

# ***RCO: Unintended Consequences (Cont.)***

## **3) Legal Ramifications:**

- In neighboring Massachusetts, two RCOs have been ruled unconstitutional in Federal Court, and the ordinances have therefore been rescinded.
- The precedent set by these two landmark cases opens up the possibility of a lawsuit to any municipality that enters into a similar agreement. With that risk, comes the potential cost of a lengthy litigation process.



## ***RCO: Unintended Consequences (Cont.)***

- These cases are especially significant because they incorporate Federal Law, which is applicable in all 50 states
- The apprenticeship requirement was struck down for violating ERISA, and the local hiring was struck down because it violates the Privilege and Immunities clause of the United States Constitution

# What Local Open Shop Contractors Support

- Every RCO is different – When crafting these agreements carefully focus on ensuring that the ordinance achieves the desired goals for the town without unfairly excluding qualified, local contractors
- The following are some suggestions from the local open-shop contractors here today

# Prequalification

- Mansfield wants to ensure that good, qualified contractors are working on their projects.
- The State of Connecticut's prequalification statute requires each contractor receive prequalification in order to bid on projects valued over \$500,000. That threshold could be adjusted to meet the town of Mansfield's goals on a per project basis

# Contractor Responsibility Certifications

- Set Requirements to ensure quality contractors - Each contractor must confirm that:
  - They have not been debarred by any State, Local, or government agency in the last 3 years
  - They have not defaulted on any project in the last 3 years
  - They have not had any business or trade license revoked in the last 3 years
  - The contractor maintains all documents necessary to properly document their employees are legal residents of the United States

# Apprenticeship

- Providing careers in construction for our employees is an important aspect of our business. It is important however to make sure that these requirements do not prevent qualified contractors from bidding public projects in Mansfield
- Some sample language for possible apprenticeship requirements are:

# Apprenticeship (Cont.)

- Contractors shall participate in State of Connecticut-approved local employment training programs, or develop on-the-job training opportunities and participate and assist in any association or employer-group training program relevant to the contractor's employment needs." OR

# Apprenticeship (Cont.)

- Contractors must participate in an apprenticeship program registered with the State of CT or a relevant craft training program that provides training appropriate to the specific tasks the employees will perform on the project.

# Local Hiring Radius

- Hiring local workers is important for the Town of Mansfield. We would suggest implementing a local hiring radius that would read:
- All new hires for each project must come from one of the following towns including:
  - Mansfield, Coventry, Windham, Chaplin, Columbia, Lebanon, Willington, Tolland, or Ashford
  - This could be expanded to include Windham, Tolland, and New London Counties if the committee thought necessary



# Local Hiring Radius (Cont.)

- This language will achieve the goals of hiring local workers and providing careers in construction for people in the community
- It is important to note that by instituting this provision for new hires, it will allow contractors to keep the employees they have to work on the job, but hire locally when they expand

# Safety

- Safety is one of the most important aspects of construction – ALL contractors want to ensure their job sites are safe and their employees are well trained in safety
- Require all firms to have a safety plan
- Require all firms to do weekly safety meetings
- Set a minimum Insurance Modification Rate

# Summary

- Every RCO is different, and if Mansfield does decide to move forward with an ordinance, they should write the law carefully with input from all types of industry experts and leaders
- Any ordinance drafted needs legal review based on recent federal court decisions
- It is possible to achieve a balance, accomplish your goals, and avoid any unintended consequences. We hope you consider us to be a resource if you go forward with this process